This notice was modified on February 22, 2010.

***With modifications shown (see "Key" below).**

Department of Revenue

Modification of Revenue Notice # 01-06: Mortgage Registry Tax – Exemption for Mortgages that Secure Qualifying Agricultural Loans

Introduction

A mortgage registry tax exemption was enacted in 2001 and amended in 2009 for mortgages securing loans that are used to acquire or improve certain types of agricultural real property. This Revenue Notice provides guidance on the applicability of the exemption. The exemption is set forth in *Minnesota Statutes*, section 287.04, clause (i), as follows:

> an agricultural mortgage if the proceeds of the loan secured by the mortgage are used to acquire or improve real property classified under *Minnesota Statutes*, section 273.13, subdivision 23, paragraph (a)~~,~~ or (b)~~, clause (1), (2), or (3)~~.

The amended version of the exemption is effective for mortgages that are both acknowledged and recorded after May 16, 2009. Acknowledged means that the mortgage document has been notarized.

Department Positions

1. Definition of Agricultural Mortgage

For the purposes of this exemption, a mortgage is an agricultural mortgage to the extent that it secures a loan intended to be used to acquire or improve qualifying real property, and the qualifying real property is further intended to be used for the production of agricultural products as defined in *Minnesota Statutes*, section 273.13, subdivision 23, paragraph ~~(e)~~ (i).

Thus, if the intent of the loan is to finance the acquisition of qualifying real property that will be converted to a non-agricultural use, or if the proceeds are intended to be used to improve qualified real property in a way that converts its use to a non-agricultural use, the mortgage is not exempt. Similarly, if the proceeds of a loan are used, or are intended to be used, to acquire or improve a house, a residential-use garage, or the immediately surrounding one acre of land, the mortgage will not be exempt, even if the house, garage and acre of land are part of an agricultural homestead.

2. Definition of Acquire

For the purpose of this exemption, a loan is used to acquire real property if the proceeds are used to purchase real property. Loans used to finance the leasing of real property are not included in this definition.

3. Definition of Improve

A loan is used to improve real property to the extent that the proceeds of the loan are used to: (i) construct or improve buildings ~~and~~ or fences used for agricultural purposes; or, (ii) improve the land itself by financing ditching, draining, grubbing, clearing, breaking, or any other necessary or useful improvement which is of permanent value to the land and which is related to preparing the land, or enhancing its utility, for the production of agricultural products. Expenditures for both the involved labor, as well as any associated materials that are either consumed in the performance of the labor or permanently incorporated into the land, are included. Improvements are betterments that change the character of real property by increasing its value, extending its useful life, or adapting it to a new use. The exemption does not apply to mortgages that secure loans used to make repairs. Repairs are work done to property to keep it in good order or maintain its current value.

4. Definition of Real Property

For purposes of this exemption, real property includes the land itself, and all buildings, structures, or fixtures on it. Real property does not include tools, implements, machinery, or equipment attached to or installed in the real property, regardless or size, weight, or method of attachment.

Therefore, if the proceeds of a loan are used to acquire things that are not real property, ~~things~~ such as seeds, fertilizer, or farm implements, the associated mortgage is not exempt. Similarly, if the proceeds of a loan are used to improve property that is not real property, such as when a loan is used to increase the capacity of a portable grain dryer, the associated mortgage is not exempt.

5. Current Classification of Property Being Acquired or Improved

For the purposes of this exemption, the acquired or improved real property must be classified as agricultural property under *Minnesota Statutes,* section 273.13, subdivision 23, paragraph (a)~~,~~ or (b),~~ clause (1), (2), or (3),~~ at the time the mortgage is presented for recording. ~~*Minnesota Statutes*, section 273.13, subdivision 23, paragraph (a), is the property tax classification statute for homesteaded agricultural land and improvements. Paragraph (b), clauses (1) and (2), are property tax classification provisions for timberlands; and, paragraph (b), clause (3), is the property tax classification provision for non-homestead agricultural real property.~~ *Minnesota Statutes*, section 273.13, subdivision 23, paragraphs (a) and (b), is the property tax classification statute for homestead and nonhomestead agricultural real property. The most recent valuation notice for the property issued under *Minnesota Statutes,* section 273.121 may be used to document the current classification of the property. However, this method may not be used prior to the issuance of the valuation notice for the current assessment year if the classification of the property was changed for the current assessment year.

6. Mixed-purpose and Re-financing Loans

Mortgages that secure re-financing loans are entitled to the exemption if the proceeds from the re-financing loan are used to pay-off a prior loan that was used to improve or acquire qualifying real property.

Pro-ration of the exemption is required in cases where the mortgage secures a mixed-purpose loan. If only a portion of the loan proceeds are used for exempt purposes, the tax applies to the remaining principal debt amount.

7. Required Documentation

The mortgagor or mortgagee, or both, must provide a signed statement to document the fact that they have claimed this exemption. The statement may either be incorporated into the body of the mortgage or~~,~~ the statement may be made in a separate document that is attached to, and recorded as a part of, the mortgage to which it relates.

~~**8. Effective Date**~~

~~The exemption is effective for mortgages that are both acknowledged and recorded on or after August 1, 2001. For the purpose of this effective date, acknowledged means that the mortgagor has signed a notarized statement appearing within the mortgage stating that they caused the mortgage to be prepared, and have signed it, for the purposes stated therein.~~

~~Dated: 29 October, 2001~~

~~Jennifer Engh~~
~~Assistant Commissioner for Tax Policy~~

<u>ELIZABETH KADOUN, Assistant Commissioner for Tax Policy and External Relations</u>

<u>Publication Date: February 22, 2010</u>

***Key: Underlining indicates additions to existing Revenue Notice language. Strikeouts indicate deletions from existing Revenue Notice language.**

Please see next page for a clean, printable copy of this notice as modified.

****As modified.**

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Thus, if the intent of the loan is to finance the acquisition of qualifying real property that will be converted to a non-agricultural use, or if the proceeds are intended to be used to improve qualified real property in a way that converts its use to a non-agricultural use, the mortgage is not exempt. Similarly, if the proceeds of a loan are used, or are intended to be used, to acquire or improve a house, a residential-use garage, or the immediately surrounding one acre of land, the mortgage will not be exempt, even if the house, garage and acre of land are part of an agricultural homestead.

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ELIZABETH KADOUN, Assistant Commissioner
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